

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

MATTHEW HOUSTON,

Case No. 2:19-cv-01740-APG-BNW

Petitioner,

## ORDER

V.

JERRY HOWELL, et al.,

## Respondents.

8 Petitioner Matthew Houston has submitted a petition for a writ of habeas corpus under 28  
9 U.S.C. § 2241. Houston is challenging his custody based on a judgment of conviction of a state  
10 court so 28 U.S.C. § 2254 governs this action. He will need to file an amended petition on the  
11 court's § 2254 petition form.

12 Houston asks for monetary relief but that is not available in a habeas corpus action.  
13 Additionally, because the relief he requests would necessarily imply that his custody is invalid,  
14 he must first obtain relief from the judgment of conviction through a habeas corpus petition  
15 before he can obtain any monetary relief. *See Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994).  
16 Houston's amended petition should not ask for monetary relief.

17 Houston has not paid the filing fee, nor has he filed an application to proceed *in forma*  
18 *pauperis*. He will need to do one of these things before the action can proceed.

19 I THEREFORE ORDER that petitioner Houston must file an application for leave to  
20 proceed *in forma pauperis*. The clerk of the court shall send Houston a blank non-inmate  
21 application packet.<sup>1</sup> In the alternative, Houston shall make the necessary arrangements to pay

<sup>23</sup> <sup>1</sup> <https://www.nvd.uscourts.gov/wp-content/uploads/2017/08/Application-to-Proceed-in-Forma-Pauperis-Non-Inmate.pdf>

1 the filing fee of \$5.00, accompanied by a copy of this order. Houston will have 45 days from the  
2 date that this order is entered to comply. Failure to comply will result in the dismissal of this  
3 action.

4 I FURTHER ORDER that the clerk of the court shall file the petition for a writ of habeas  
5 corpus currently in the docket at ECF No. 1-1.

6 I FURTHER ORDER that the clerk of the court shall send Houston a petition for a writ  
7 of habeas corpus pursuant to 28 U.S.C. § 2254 form with instructions. Houston shall have 45  
8 days from the date that this order is entered to file an amended petition to correct the noted  
9 deficiencies. That deadline does not signify any implied finding of a basis for tolling during the  
10 time period established. Houston at all times remains responsible for calculating the running of  
11 the federal limitation period under 28 U.S.C. § 2244(d)(1) and timely asserting claims. Failure  
12 to comply with this order will result in the dismissal of this action.

13 I FURTHER ORDER that Houston shall clearly title the amended petition as such by  
14 placing the word “AMENDED” immediately above “Petition for a Writ of Habeas Corpus  
15 Pursuant to 28 U.S.C. § 2254” on page 1 in the caption, and he shall place the case number, 2:19-  
16 cv-01740-APG-BNW, above the word “AMENDED.”

17 I FURTHER ORDER that the clerk shall add Aaron Ford, Attorney General for the State  
18 of Nevada, as counsel for respondents.

19 I FURTHER ORDER that the clerk shall electronically serve upon the respondents a  
20 copy of the petition and this order. The respondents’ counsel shall enter a notice of appearance  
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1 within 20 days of entry of this order, and no further response shall be required from the  
2 respondents until further order of the court.

3 Dated: October 15, 2019.

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ANDREW P. GORDON  
UNITED STATES DISTRICT JUDGE